

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Richard & Shaldine Gillman :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Personal Income Tax :
under Article 22 of the Tax Law
for the Year 1969. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 6th day of March, 1981, he served the within notice of Decision by certified mail upon Richard & Shaldine Gillman, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Richard & Shaldine Gillman
c/o Edwards & Hanly
23 Cullen Dr.
W. Orange, NJ

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
6th day of March, 1981.

Carrie P. Hagelund

Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

March 6, 1981

Richard & Shaldine Gillman
c/o Edwards & Hanly
23 Cullen Dr.
W. Orange, NJ

Dear Mr. & Mrs. Gillman:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 690 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
RICHARD GILLMAN and SHALDINE GILLMAN	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1969.	:	
_____	:	

Petitioners, Richard Gillman and Shaldine Gillman, 23 Cullen Drive, West Orange, New Jersey, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1969 (File No. 15703).

Petitioners have requested that this matter be submitted to the Tax Commission for a decision without the necessity for a formal hearing on the basis of all the documents in the file.

ISSUES

- I. Whether the Notice of Deficiency issued to the petitioners for the year 1969 is barred by the statute of limitations.
- II. Whether petitioner Richard Gillman, a nonresident partner in the partnership of Edwards & Hanly, is bound by the partnership allocation percentage.
- III. Whether the Notice of Deficiency against petitioners is erroneous.

FINDINGS OF FACT

1. On May 18, 1970, Edwards & Hanly, a New York partnership engaged in the stock brokerage business, filed a partnership return for the fiscal year ending September 30, 1969. On February 21, 1973, Edwards & Hanly and the State Tax Commission executed a consent extending the period within which to

issue an assessment for the fiscal year ending September 30, 1969 to April 15, 1974. The aforementioned consent was further extended to April 15, 1975 on January 28, 1974.

2. On January 6, 1975, the Income Tax Bureau issued a Statement of Audit Changes against the partnership Edwards & Hanly imposing additional unincorporated business tax in the amount of \$39,490.72, plus interest of \$11,792.32, for a total of \$51,283.04. The Statement of Audit Changes was based on an audit re-allocating partnership income under §707(b) of the Tax Law instead of §707(c) as allocated by the partnership. The partnership consented to these findings.

3. Petitioner Richard Gillman was a nonresident partner of Edwards & Hanly in 1969 and received a distributive share of income from the partnership.

4. Petitioners Richard Gillman and Shaldine Gillman filed a New York State income tax nonresident return for 1969. Said petitioners signed a consent extending the period of limitation upon assessment of personal income taxes (Form IT-75) for the taxable year ended December 31, 1969 to April 15, 1974. Further consents were executed extending the period for limitation of assessment to April 15, 1975 and April 15, 1976 on January 28, 1974 and January 15, 1975 respectively.

5. On April 12, 1976, the Audit Division issued a Statement of Audit Changes and a Notice of Deficiency against petitioners Richard Gillman and Shaldine Gillman imposing additional personal income tax for the year 1969 in the amount of \$6,921.45, plus interest of \$2,488.95, for a total of \$9,410.40. The Notice of Deficiency was based upon an increase of Richard Gillman's distributive share of partnership income from Edwards & Hanly which in turn was based upon the Statement of Audit Changes issued against Edwards and Hanly

for fiscal year ending September 30, 1969 as more fully set forth in Finding of Fact "2", supra. The petitioners timely filed a petition for redetermination of said Notice of Deficiency.

CONCLUSIONS OF LAW

A. That the Notice of Deficiency issued against petitioners for the year 1969 was timely issued in accordance with the provisions of section 683 of the Tax Law.

B. That the Statement of Audit Changes issued against the partnership for the fiscal year ending September 30, 1969 was properly issued in accordance with the provisions of section 722 of Article 23 of the Tax Law and was consented to by the partnership.

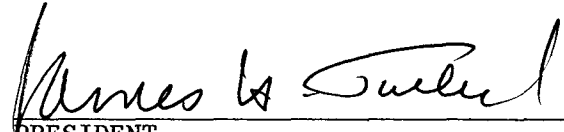
C. That consent by the partnership of Edwards & Hanly to the Audit Division re-allocation of partnership income to New York is binding on petitioner Richard Gillman as a partner, and provides a proper basis for increasing the portion of his distributive share of partnership income connected with New York sources and thus subject to New York State income tax.

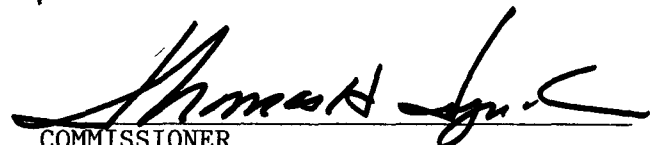
D. That petitioner Richard Gillman's New York adjusted gross income for the year 1969 derived from his activities on behalf of Edwards & Hanly in accordance with the meaning and intent of section 632(a)(1)(A) of the Tax Law constituted his distributive share of the partnership income of Edwards & Hanly as determined under section 637 of the Tax Law.


E. That the Notice of Deficiency issued against Richard Gillman and Shaldine Gillman for 1969 is correct and their petition for redetermination thereof is hereby denied.

DATED: Albany, New York
MAR 06 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER